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Racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Declaration and Programme of Action

Fulfilling the economic, social and cultural rights of people of African descent in the age of digitalization, artificial intelligence, and new and emerging technologies

Report of the Working Group of Experts on People of African Descent*

Summary

The present document contains the report of the Working Group of Experts on People of African Descent on its thirty-third session held in Addis Ababa and thirty-fourth session held in Geneva, both private, and focuses on the theme “Fulfilling the Economic, Social and Cultural Rights of People of African Descent in the Age of Digitalization, Artificial Intelligence, and New and Emerging Technologies”, prepared pursuant to Human Rights Council resolutions 9/14, 18/28, 27/25, 36/23, 45/24 and 54/26.

In the present report, the Working Group examines the implications of digitalization, artificial intelligence (AI), and new and emerging technologies for people of African descent. It analyzes embedded racial and other forms of bias, documented misuse and the actual and potential discriminatory impact, as well as the positive potential, on the human rights of people of African descent, especially with regard to economic, social and cultural rights (ESCRs). The Working Group found an alarming gap between the proliferation and widening application of AI systems and their governance mechanisms, which, based on the evidence of biases and lack of transparency in the data and algorithms in their design, can result in disproportionate adverse effects on African descent populations, in particular in the protection and realization of their ESCRs. This is systematically overlooked by both public and private regulators, thereby contributing to the non-respect of obligations under international human rights law, and threatening to compound and normalize the inherent racism, and exacerbate racial discrimination and existing inequalities. The Working Group concludes by recommending several positive measures at the international, national and institutional levels for positive and non-discriminatory use of digitalisation and AI in the context of the ESCRs of people of African descent.

* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.

I. Introduction

1. The present report is submitted to the Human Rights Council in accordance with Council resolutions 9/14, 18/28, 27/25, 36/23, 45/24 and 54/26. The report is focused on the Working Group's consultations with various stakeholders and partners, as well as on its research.
2. Following the scheduling of the annual sessions of the Permanent Forum on People of African descent in the spring, the Working Group took a decision to invert its private and public sessions to facilitate aligning its private session with the annual session of the Permanent Forum on People of African Descent for enhanced collaboration and complementarity. The Working Group therefore held its thirty-third and thirty-fourth sessions, the 2023 and 2024 private sessions, respectively in Addis Ababa, Ethiopia from 4 to 8 December 2023, and in Geneva from 22 to 26 April 2024.
3. In preparation for this report, the Working Group issued a call for written submissions from States and civil society. It also organized a virtual consultation on 23 July 2024 with experts specialized in various areas of digitalization, artificial intelligence (AI), and new and emerging technologies.
4. In the present report, the Working Group stresses that digitalization, AI, and new and emerging technologies - while inherently neutral and objective - are subject to the perceptions and perspectives, postures and positions of the people who design, develop and deploy these technologies. The regulatory regimes, preparation of and for, and access to these technologies should therefore include more fully the participation and the expertise of people of African descent to shape the discourse and interrogation of these technologies. In this regard, the report aims to proffer measures that would reimagine data collection, analysis, and data use for appropriate safeguards and the realization of economic, social and cultural rights (ESCRs), for people of African descent.
5. The Working Group thanks States, representatives of international organizations, academic institutions and civil society for their inputs to this report.

II. Organization of the sessions

A. Thirty-third session

6. The Working Group held its thirty-third session at the United Nations Conference Center in Addis Ababa, Ethiopia, at the African Union (AU) Headquarters, from 4 to 8 December 2023. This was the first time a Working Group session was organized outside of Geneva and New York. The Working Group chose Addis Ababa mainly to continue to strengthen its collaboration and cooperation with the African Union on two of the Working Group's current priorities, namely racial justice and reparatory justice, building on prior engagement with the African Commission for Human and Peoples Rights and the AU's Citizens & Diaspora Directorate (CIDO), as well as to engage with other key stakeholders in the region, and benefit from wide participation of people of African descent and African civil society. In addition to its internal planning, monitoring and evaluation agenda, the Working Group met with the outgoing Commissioner and Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants and discussed common concerns about the situation of African migrants in North America, and the Middle East and North Africa, including those seeking to transit to Europe. In this context, the Working Group also held a virtual consultation with the civil society Regional Network for Development and Anti-Racism in the Middle East and North Africa (RNDAR-MENA) and an in-person meeting with a consortium of civil society organizations to inform about the mandate, exchange ideas and strategies about common priorities, and explore opportunities for collaboration to support anti-racism work in the region. The Working Group also held bilateral meetings with the OHCHR East Africa Regional Office (EARO) Deputy Regional Representative; the Special Representative of the Secretary-General for the AU and Head of the Office to the AU; the Principal Political Affairs Officer, Office of the Special Envoy for the Horn of Africa;

Commissioner of the African Commission on Human and Peoples Rights; and Head of AU CIDO. The Chair of the Working Group had a virtual meeting with the UN Deputy Secretary-General Amina Mohammed on 8 December 2023. Finally, the Working Group co-organized and co-hosted with Professor John-Mark Iyi of the University of the Western Cape and Professor Mesenbet Assefa of Addis Ababa University, a Colloquium on Migration, in a hybrid format, anchored from the Ras Mekonnen Hall at Addis Ababa University, with the School of Law, Addis Ababa University; the Faculty of Law, University of the Western Cape; the African Centre for Transnational and Criminal Justice; and the Africa Reparations Hub of the University of the Free State, South Africa. The colloquium saw presentations from several universities, and the AU Senior Migration Advisor, the outcomes of which are the basis for the Working Group's ongoing research on migration issues affecting people of African descent.

B. Thirty-fourth session

7. The Working Group held its thirty-fourth session at the United Nations Office in Geneva, Switzerland from 22 to 26 April 2024. The session included meetings with UN entities working on common areas of focus, and segments on the elaboration of the Working Group's strategic engagement, advocacy and partnership at regional levels. The Working Group met with the World Health Organisation and the International Labour Organisation and held an informal consultation with Australia. The Working Group reviewed draft regional strategies following the determination of focal points at its thirty-third session and agreed on defined approaches for implementation. The Working Group also reviewed the draft outline for the present report, as well as the concept note and workplan for the thirty fifth session on reparatory justice and people of African descent. The Working Group reviewed methodologies and lessons learned from the last three country visits, as well as its working methods with a view to finalizing agreed changes at its thirty sixth session.

III. Activities of the Working Group (July 2023–July 2024)

8. In July 2023, the Working Group of Experts on People of African Descent conducted virtual consultations with civil society organizations and national human rights institutions, as well as with former mandate holders of the Working Group. These consultations informed the preparation of its report entitled "Facilitating the journey from rhetoric to reality",¹ which focused on the 20 years of work since its establishment and the status of implementation of the Working Group's country and thematic recommendations, achievements and recommendations for future. The mandate also received information to its call for inputs for the report from States.

9. In September 2023, during the fifty-fourth session of the Human Rights Council, the Chair of the Working Group presented two reports on the mandate's country visits to Australia in December 2022,² and to the United Kingdom of Great Britain and Northern Ireland in January 2023.³ The Chair also presented the annual reports on "Economic empowerment of people of African descent",⁴ summarizing the conclusions and recommendations of the mandate's thirty-second session on the same theme, as well as on the aforementioned report "Facilitating the journey from rhetoric to reality".

10. On 30 October 2023, at the seventy-eighth session of the General Assembly, the Chair of the Working Group presented a consolidated report on the mandate's activities, including on its 2023 thematic focus on the economic empowerment of people of African descent. The Chair of the Working Group also participated in an interactive dialogue.

¹ See A/HRC/54/71.

² See A/HRC/54/67/Add.2, visit to Australia from 12 to 20 December 2022.

³ See A/HRC/54/67/Add.1, visit to the United Kingdom of Great Britain and Northern Ireland from 18 to 27 January 2023, report of the Working Group of Experts on People of African Descent.

⁴ See A/HRC/54/67.

11. The Chair of the Working Group participated in the twenty-first session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action held from 16 to 20 October and 20 to 24 November 2023. She briefed participants on the situation of people of African descent in the context of progress achieved in the implementation of the International Decade for People of African Descent. Furthermore, through the participation of the Chair, the Working Group continued its engagement on the drafting of the United Nations declaration on the respect, protection and fulfilment of the human rights of people of African descent. The Chair also participated in the twenty-second session of the Intergovernmental Working Group, held from 20 to 24 May 2024 in Geneva, where she continued to represent and present the contributions of the Working Group to the drafting process of the Declaration.

12. The Working Group undertook fact-finding country visits to Norway in December 2023 and to Colombia in May 2024. The report of the visit to Norway⁵ is presented to the Human Rights Council in 2024 and that of Colombia in 2025.

13. From 15 to 16 January 2024, the Chair, Ms. Barbara G. Reynolds and Ms. Bina D'Costa, member of the Working Group, participated as panellists in the Regional meeting for Asia and the Pacific Region on the International Decade for People of African Descent. During the panel focused on recognition, the Chair of the Working Group delivered a statement in which she expressed concern about the invisibility and limited voice and agency of people of African descent in the Asia-Pacific region. During the panel focused on justice, Ms D'Costa noted that none of the countries of Asia and the Pacific had yet invited the Working Group for a country visit nor responded to a call for information sent out by the Working Group, and that this was reflective of the prevalence of racial discrimination manifested in the denial of the existence of people of African descent in the region.

14. On 11 April 2024, the Chair participated in meetings on cooperation and exchange of views with the European Commission against Racism and Intolerance (ECRI) and other related European stakeholders, organized by ECRI in Strasbourg, France.

15. The Working Group continued to issue communications to concerned States regarding cases of racial discrimination faced by people of African descent in different countries.

16. Among other activities undertaken by the members of the Working Group, the Chair, Ms. Barbara G. Reynolds participated in the following selected activities: (a) Delivered keynote address for a webinar on "Recognition, Justice, and Development: Co-Creating Solutions for People of African Descent", organized by the African Australian Advocacy Centre (AAAC) (11 August 2023); (b) Panellist in a virtual meeting on first-person testimonies of people of African descent fleeing Ukraine, organized by the Working Group and PADLink (31 August 2023); (c) Recorded a OHCHR video message for the commemoration of UDHR75 (10 December 2023); (d) Delivered a video presentation during a side-event at HRC55 on "Combating Global Racism: Implementing the Durban Declaration and Programme of Action", organized by a group of NGOs (25 March 2024); (e) Panellist in a side-event during the third session of the Permanent Forum on People of African Descent, on "Implementing the DDPA: an Integral Part of the UN Decade for People of African Descent", organized by a group of NGOs (16 April 2024); (f) Panellist in a virtual meeting on "The Contribution of the Right to development towards Combating Discrimination including Racial Discrimination", organized by the UN Working Group on Right to Development (15 May 2024); (g) Panellist in a virtual meeting on "Summit of the Future Dialogues: Economic Empowerment of People of African Descent – Financial Architecture, Governance and Global Monetary and Financial Systems", organized by Geledes – Black Women Institute (7 June 2024); (h) Panellist at a conference on "Securing Afro-descendent Peoples land and territorial tenure rights in Latin America and the Caribbean: An effective path towards conservation and action against climate change", organized by Rights and Resources International, Office of the Vice-President of Colombia, CONAQ, Bogotá, Colombia (11-13 June 2024); (i) Panellist in a virtual meeting during a side-event at the High Level Political Forum on Sustainable Development, on "Strengthening the Role of Major

⁵ See A/HRC/57/70/Add.1, visit to Norway from 11 to 20 December 2023, report of the Working Group of Experts on People of African Descent.

Groups and other Stakeholders in Combating Global Racism” (17 July 2024). Ms. Bina D’Costa (a) organized and chaired a meeting with the Expert Mechanism on the Rights of Indigenous Peoples and the Working Group in Canberra, Australia, in which plans over the next five years of both mandates were discussed (16 October 2023); (b) co-presented the Working Group’s work in the International Feminist Journal of Politics conference in Maputo (with Professor Shine Choi) in a paper entitled “Anti-racist education in the Asia and the Pacific and Engagement International Human Rights Mechanisms for the Rights of Africans and People of African descent”; (c) presented the Working Group’s mandate and work at the Africa Australia conference (December 2023); (d) was keynote speaker at the Development Studies Association Conference, University of Melbourne, where she presented a paper on hopelessness and racism and also spoke about decolonizing the curriculum in Australia, Asia, and the Pacific region; (e) was a panellist at a high-profile event with former New Zealand Prime Minister Helen Clark and Australian Research Council Laureate Fellow Professor Sharon Friel on how to build a healthier future for all, during which she discussed migration and asylum issues and racism against people of African descent, focusing on the Working Group; (f) presented on victims and survivors of trafficking at the sixth meeting of the Bali Process Technical Experts Group, at the invitation of IOM and the Australian Government (March 2024); (g) was a panellist on “Resistance, Power, and the New Global Ethical Order”, where she spoke about racism, colonialism and invisibility of people of African descent in the war in the Occupied Palestinian Territory (18 July 2024); (h) was a panellist on “United Nations and Diplomacy and learning for both people of African descent and Indigenous Peoples” at the 75th anniversary event of the department of International Relations, the Australian National University. Ms. Namakula (a) participated as convenor of a virtual colloquium on the theme “Unifying Africa for Action to Advance Reparatory Justice”, with the overall aim of fostering dialogue and action toward reparatory justice in Africa, which included the launch of the University of the Free State (UFS) Africa Reparation Hub, organized by UFS (6 June 2024); (b) continued her work with the African Union Reparations Desk where the current focus is on securing funding through dialogue with funders.

IV. Fulfilling the economic, social, and cultural rights of people of African descent in the age of digitalization, artificial intelligence, and new and emerging technologies

17. Digitalization, AI, and new and emerging technologies, as well as their processes, have led to significant transformations across virtually all sectors of society. New and emerging technologies are generally characterized by the following five attributes: (i) radical novelty; (ii) relatively fast growth; (iii) coherence; (iv) prominent impact; and (v) uncertainty and ambiguity⁶, which provide the basis for defining a new and emerging technology as:

18. A radically novel and relatively fast-growing technology characterised by a certain degree of coherence persisting over time and with the potential to exert a considerable impact on the socio-economic domain(s) which is observed in terms of the composition of actors, institutions and patterns of interactions among those, along with the associated knowledge production processes.⁷

19. AI should be understood as one among many new and emerging technologies. Digitalization and AI have enormous potential for automating and augmenting human decision-making and behaviour, and their impact on the political, civil, economic, social and cultural sectors is becoming rapidly evident, raising substantial questions and concerns about human rights and ethics as the use, misuse and abuse of these technologies can inadvertently or intentionally introduce, perpetuate and exacerbate biases and discrimination in virtually all sectors, communities and societies. Digitalization and AI have a multiplier effect, speeding up and extending their scope and reach with each successive iteration in their design

⁶ Daniele Rotolo, Diana Hicks and Ben R. Martin, “What Is an Emerging Technology?”, *Research Policy*, 44(10):1827-1843 (December 2015); Oleg Litvinski, “Emerging Technology: Toward a Conceptual Definition”, *International Journal of Trade, Economics and Finance*, Vol. 9, No. 6 (December 2018); Winston & Strawn LLP, “Law Glossary: What Is Emerging Technology?”, 2024.

⁷ Daniele Rotolo, Diana Hicks and Ben R. Martin, “What Is an Emerging Technology”, p. 13.

and deployment, whether for good or for ill. Their impact is therefore not merely aggregative but cumulative, with each successive use, adaptation and/or application of an earlier technology building on what already was in place in multiple ways, faster and farther.

20. While digitalization and AI are inherently neutral and objective, they are designed, developed and deployed by human beings. Human beings have perceptions and perspectives, postures and positions on every issue. They are therefore inherently subjective, naturally biased and potentially discriminatory and damaging or equalizing and enabling to other human beings, all capacities that they consciously and/or unconsciously integrate into digital technologies, which in turn automate or augment these capacities. The ethical implications and ramifications of digital technologies for human beings and human ecology are therefore a critical area of concern. In his 12 July 2023 address at the high-level side event of the fifty-third session of the Human Rights Council, the UN High Commissioner for Human Rights noted that ‘to be effective, to be humane, to put people at the heart of the development of new technologies, any solution – any regulation – must be grounded in respect for human rights.’ According to a recent ILO research paper, “AI is aiming to replace humans in strenuous mental tasks rather than physical ones which has largely happened with the previous waves of automation and robotisation.”⁸ For people of African descent who routinely face institutional, structural and systemic racism, whether everyday apps or complex algorithms, digitalization and AI have the potential to mask, accelerate, intensify, broaden and deepen discrimination, while appearing neutral and even benevolent when compared to the non-digital racist practices of previous eras. They also offer unprecedented opportunities to protect and promote human rights, democracy and the rule of law.

21. While digital technologies bring solutions to societal problems, the unpredictable nature and uncontrolled use, inexplicability, and reflection or amplification of data biases raise various concerns about privacy, security, fairness, human rights and even democracy. Increasing evidence demonstrates how existing and emerging technologies might not only exacerbate existing inequalities, but differentiate, target and experiment on marginalized communities. Racialized communities are disproportionately negatively affected by surveillance, (data-driven) profiling, discrimination online and other digital rights violations. While these technologies are increasingly deployed to address complex social problems, their impact on people of African descent is systematically overlooked.

A. Virtual consultation with experts on AI

22. The Working Group organized a virtual consultation on 23 July 2024 with technology experts engaged in digitalization, AI, and new and emerging technologies. The consultation explored the racialization, documented misuse and the actual and potential discriminatory impact of digitalization, AI, and new and emerging technologies on the ESCRs of people of African descent.

23. Focusing on “African Economic Independence in the Age of AI and Digitalization”, Kofi Takyi Asante, Institute of statistical, Social and Economic Research (ISSER) at the University of Ghana, highlighted the revolutionary potential of AI and digitalization and explained that it involved risks as well as enhanced efficiency and productivity. He informed that by 2030, AI is projected to contribute \$15.7 trillion to global GDP, and that the greatest gains will go to China (45%) and North America (14.5%).⁹ Of the \$15.7 trillion, \$1.2 trillion could be generated in Africa.¹⁰ He explained that in Africa, many sectors could benefit from the application of AI, including health, agriculture, water, clean energy, and many more. He further explained that it could contribute to Africa’s achievement of the AU Agenda 2063 and SDGs. Mr. Asante pointed out that AI development is currently concentrated in China, the United Kingdom, and the United States. Some universities in Africa have now opened AI labs, including the University of Pretoria, Makerere University, Kwame Nkrumah University

⁸ Submission by the International Labour Organization (ILO), “The economics of artificial intelligence: Implications for the future of work”, as cited in the report of the Council of Europe (CoE), “Artificial intelligence and labour markets: friend or foe?”, Doc. 15159, p. 6.

⁹ Price Waterhouse Coopers.

¹⁰ United Nations Economic Commission for Africa.

of Science and Technology, and the African Institute for Mathematical Sciences has developed Masters and PhD programmes in AI, machine learning, mathematics, and data science. Many western Big Tech firms have opened AI labs in Africa, including Microsoft in Nairobi in 2020, Google in Accra in 2018, and IBM in Nairobi in 2018 and in Johannesburg in 2016. He provided examples of how the past few years had seen a growing number of AI startups across the continent, albeit isolated and small scale. In Ghana, AI and digitalization initiatives have developed the Biometric Ghana Card, a multi-purpose biometric national identification card for day-to-day electronic and physical transactions;¹¹ a digital address system; drone delivery of medical products, and AI systems to help farmers track weather patterns. Challenges to AI development in Africa included low investment in R&D, lack of relevant skills, and that there was a need for supportive policies and robust infrastructure to enable Africa to benefit fully from AI,¹² he explained. He added that most African countries lacked the financial, technological, and institutional capacity to drive AI development, and that this was due to how the Continent's development had been undermined by foreign, imperialist interests, including by the international financial architecture, which contributed to disinvestment in social sectors such as education.

24. Joe Atkinson, University of Southampton, focused on “Human Rights at Work in the Age of Artificial Intelligence”. He explained that governance by AI and algorithmic decision-making (ADM) has emerged as a new form of ‘governance by numbers’ in both public and private sectors. ADM was being used by governments for a wide range of decisions relating to policing, immigration, housing and social security. It was also being used by corporations for targeted advertising and recommendations, and personal pricing. Mr. Atkinson detailed the use of AI in automation and algorithmic management in areas such as recruitment, in pre-screening, CV sifting, and interview analysis; in route planning, and scheduling allocation (e.g., platforms/apps); in evaluation, to monitor tasks and performance, algorithmic ratings and assessments (e.g., call centers); and to discipline, such as suspending low scoring workers, altering access to shifts, and reliance on algorithmic metrics in dismissals and redundancies. Automation could, eventually, lead to a level of job destruction and work scarcity that undermines the right to work, he pointed out, in which case, policies designed to protect the right to work would be needed. Such protections could entail limiting the automation of specific tasks or jobs; policies that spread work across more people; and job guarantee schemes. He further explained that tech also threatened equality at work, underlining that algorithmic management posed a serious threat to the right to non-discrimination, and that this could be the result of assumptions or bias of engineers; inaccurate or incomplete data, leading to errors or biases; and replication or amplification of existing inequalities. This problem was compounded by a lack of transparency and accountability over the design and implementation of algorithmic tools. Tech also posed a threat to the right to just and fair working conditions in numerous ways. Algorithmic management undermined just conditions by enabling avoidance of employment law protections. Surveillance and intensification of work creates health and safety risks. It heightens the level of control over and subordination of workers. It also enables the deskilling of work, he added, emphasizing that the overall effect was to recommodify and dehumanize work.

25. Professor Isak Nti Asare, Center for Applied Cybersecurity Research at Indiana University, drawing from Johan Galtung's 1969 work,¹³ focused on the application of positive peace in building governance mechanisms for AI and emerging technologies. He underscored the understanding that technology is a product of the underlying society from which it is conceived, which includes attitudes, structures and institutions. He warned that inequalities in contemporary technological tools and systems are predicated on the consolidation of power in the digital economy among a few tech companies, and that we could not expect anything less from such a primordial environment of structural inequality. He expounded this fundamental relationship by emphasizing that the current global focus on a paradigm of harm mitigation within the digital ecosystem addressed the symptoms of an

¹¹ See <https://register.nia.gov.gh/>.

¹² United Nations Economic Commission for Africa.

¹³ Johan Galtung, “Violence, Peace and Peace Research”, *Journal of Peace Research*, Vol 6:3 (1969): 168.

otherwise structural problem, which consequently fuels the manifestation of inequality and violent outcomes.

26. Gift Mwonzora, Willy Brandt School of Public Policy at the University of Erfurt, focused on health and healthcare, nutrition, and food security. He presented findings from his research and highlighted examples of precarity in the labour market as a result of automation and digitalization in agriculture. In South Africa, citrus farming (horticultural sector) mostly employs a large part of the female labour force, in particular women of colour. While picking fruits largely remains a physical activity still involving human intervention, mechanization in some processes of production, such as in sorting and grading, has seen women losing or in fear of losing their jobs. Further compounding the existing vulnerabilities of the casualization of labour, low wages and the seasonal nature of work in agriculture. Increasingly, fewer women are employed in such sectors as a result of being replaced by AI-driven production processes. In other sectors, the use of drone delivery systems in the medical field in Malawi and Rwanda was addressing some of the challenges of lack of access to healthcare in remote areas, constituting positive use AI and technology. However, ethical concerns remain due to a lack of duty of care regarding people of African descent in medical trials.

B. Racial bias in the technology sector

27. The technology sector has been criticized for its lack of diversity, favouring white, affluent males. Large-scale AI systems are developed almost exclusively in a small number of companies and elite university laboratories which engage mostly white males and have a history of discrimination against and exclusion of 'others', including people of African descent. Technology that is developed and produced in fields that disproportionately exclude people of African descent are more likely to reproduce racial inequalities.

28. The creation of AI systems begins with data — its extraction, organization, and subsequent modelling. Each step in this process holds the potential to introduce or perpetuate racial bias, significantly impacting the healthcare outcomes for people from racial or ethnic groups. AI systems are trained on enormous quantities of data, mostly on non-Black populations, which are used to build models of behaviour. The designers and developers of machine learning and AI systems can therefore intentionally or unintentionally introduce biases into their algorithms through the utilization of prebuilt models which contain racial biases, as evident in some generative AI systems being unable to create accurate and realistic depictions of Black people. How developers obtain such critical data raises ethical questions. Data acquisition practices often lack transparency, with instances where data is obtained without proper consent or through exploitative means.

29. Facial recognition software used by governments and the police disproportionately affect people of African descent to learn and propagate biased associations between race groups and negative attributes, exacerbating racial inequality. In 2015, for example, Google had to apologize after its image-recognition app mistakenly labelled African Americans as "gorillas".

30. The surveillance practices from times of enslavement and colonization which persist up to today, can and have been made worse with the use of AI as research has consistently shown greater inaccuracies among non-white populations. This has already led to several dangerous situations for people of African descent, such as being falsely identified as a suspect for a crime. Accounts of the disproportionate levels of harm from face recognition software experienced by people of African descent are well-known.

31. The lack of transparency and accountability in AI development exacerbates these issues. Many AI systems are developed and deployed by private companies that do not disclose their algorithms' inner workings, citing proprietary concerns. This opacity makes it difficult for independent researchers, policymakers, and the affected communities to scrutinize and challenge biased algorithms. Without transparency, it is nearly impossible to hold developers accountable for the adverse impacts of their technologies on marginalized groups. Moreover, there are often no mechanisms in place to audit or regulate AI systems effectively. Regulatory bodies lack the technical expertise and resources needed to assess the

fairness and accuracy of complex algorithms. This regulatory gap allows biased AI systems to proliferate unchecked, further entrenching existing social and economic disparities.¹⁴

C. Housing, health and nutrition

32. Although racial bias and discrimination in housing has been well documented for decades, it is not yet clear how digitalization and AI are impacting access to housing and related basic services such as water, sanitation and electricity. For example, in the United States, racial bias in housing has been manifested in the lower valuation of housing in predominantly Black neighbourhoods by as much as 21% to 23% in non-Black neighbourhoods and homes appraised below the contract price 1.9 times more than in majority-White neighbourhoods.¹⁵ This pattern of residential segregation can be observed in other countries, such as Brazil.

33. AI is revolutionizing healthcare, offering the potential to enhance diagnostic accuracy, streamline patient care, and improve health outcomes. Initially conceived to revolutionize clinical decision-making and patient care, AI relies heavily on vast datasets comprising diverse sources: patient histories, genetic profiles, lifestyle data, and more. If training data predominantly represents majority groups, the resulting models are inherently biased, producing recommendations and predictions that favour those populations. Also, the extraction and utilization of this data often occur without robust oversight or clear consent frameworks, raising significant concerns about fairness and equity. Such practices can inadvertently embed biases into AI models, perpetuating disparities in healthcare outcomes, particularly affecting people of African descent. However, the ethical principles guiding this extraction and implementation are often left to the discretion of the developers due to a significant lack of regulation. This regulatory gap means that embedding ethical considerations from the outset is crucial to ensure that AI technologies benefit patients rather than cause harm. This bias is compounded by decisions in feature engineering and hyperparameter tuning, which may overlook factors critical to understanding and addressing health disparities among people of African descent.

34. The opacity of these algorithms — often referred to as the "Black Box Problem" — obscures how decisions are made, making it challenging to identify and rectify biases that disadvantage African descent patients. Research indicates that health data is predominantly skewed towards white and male populations, reflecting historical social practices and individual programmer biases that shape AI systems. An important study scrutinized a widely adopted AI algorithm in US healthcare, revealing a troubling bias favouring white patients over equally ill Black patients. The algorithm's reliance on historical cost data disadvantaged African-descent patients due to lower previous healthcare expenditures influenced by socio-economic factors. Consequently, Black patients received fewer critical medical interventions, exacerbating health disparities and revealing systemic anti-African biases within AI systems. The algorithm relied on health care spending to predict future health needs. But with less access to care historically, patients of African descent often spent less. As a result, they had to be much sicker to be recommended for extra care under the algorithm.¹⁶

35. The COVID-19 pandemic was a reminder of both the promise of AI and also the urgent need of striking a balance between protecting the collective interest and individual rights. The crisis brought to light issues regarding data access, sharing, liability, data and

¹⁴ Submission by Motse Ntloedibe-Kuswani, the American University of Paris.

¹⁵ Jonathan Rothwell, Andre M. Perry and Mike Andrews, "The Black innovators who elevated the United States: Reassessing the Golden Age of Invention", The Brookings Institution, 23 November 2020, available at <https://www.brookings.edu/articles/the-black-innovators-who-elevated-the-united-states-reassessing-the-golden-age-of-invention/>.

¹⁶ Science, "Dissecting racial bias in an algorithm used to manage the health of populations", 25 October 2019, available at <https://www.science.org/doi/10.1126/science.aax2342>.

algorithm quality, complementarity of technology and the human, and finally the need for interdisciplinary cooperation and collaboration.¹⁷

36. Data cleaning aims to refine datasets by removing anomalies and normalizing information. Yet, what constitutes an anomaly may differ significantly across demographic groups. Data cleaning processes that overlook common occurrences within diverse populations of African descent, further marginalize these groups' health concerns, leading to incomplete and biased datasets that fail to capture the full spectrum of health issues faced by people of African descent.

37. In 2022, the EU established the European Health Data Space (EHDS) to create a common framework for the secondary use of health data. However, ethical concerns persist, particularly regarding patient consent practices. The lack of informed consent exacerbates issues of privacy and data security. Furthermore, there are risks of inequitable access to data, favouring larger, well-funded organizations over smaller entities.

38. The deployment of AI in agriculture often undermines food sovereignty by prioritizing technological solutions over traditional knowledge and practices.¹⁸ Digital technologies and AI can displace small-scale farmers, erode peasant knowledge, and concentrate power in the hands of large corporations.¹⁹ This shift threatens the autonomy of local communities and their ability to sustainably manage their food systems. Developing AI technologies that incorporate local knowledge and building local capacities to own and manage these systems can reduce dependency on external actors.

39. Given that to date the private sector has driven most of the research and development of AI applications for health care, national public health-care authorities should adopt a strategic approach to coordinating digitalization policies, research and investment, as well as management and use of personal data, with a view to ensuring full protection of fundamental rights and striking a healthy balance between individual, business and public interests.²⁰

D. Education, employment and economic empowerment

40. Education and training, employment and economic empowerment are, in the context of digitalization, both means and end. Education and training, alongside the knowledge, skills, expertise, and attitudes that they produce, are in turn foundational to employment, and alongside employment, foundational to economic empowerment. Literacy, including digital literacy, drives development, enables participation in the labour market, reduces poverty, and enhances individual and collective performance on most social development indicators.²¹ At the moment, the Black-White technological divide is clear, though inconsistently so across some platforms,²² leaving people of African descent far behind others in digital literacy, fluency and competence because of resource constraints (availability and affordability of devices, internet access and power).

¹⁷ Submission by the Council of Europe (CoE), Artificial intelligence in health care: medical, legal and ethical challenges ahead, Doc 15154, available at <https://pace.coe.int/pdf/a845d11a279c1ca4ce2896a208196db8b11e79b4226d3d4135c23dd8969a23a3?title=Doc.%2015154.pdf>.

¹⁸ End of mission statement by the Working Group of Experts on People of African Descent following its country visit to Colombia, 2024.

¹⁹ FIAN International, "Artificial Intelligence vs. Agroecology?", 14 November 2023, available at <https://www.fian.org/en/press-release/article/artificial-intelligence-vs-agroecology-3218>.

²⁰ CoE, Artificial intelligence in health care: medical, legal and ethical challenges ahead.

²¹ United Nations Educational, Scientific and Cultural Organization (UNESCO), Report of the Global Conference on Promoting literacy for a world in transition: building the foundation for sustainable and peaceful societies, 2024.

²² Aaron Smith, "African Americans and Technology Use", Pew Research Center, 6 January 2014, available at <https://www.pewresearch.org/wp-content/uploads/sites/9/2014/01/African-Americans-and-Technology-Use.pdf>; Community Tech Network, "Digital Equity for Black Americans: A Racial Justice Issue", 6 February 2023, available at <https://communitytechnetwork.org/blog/digital-equity-for-black-americans-a-racial-justice-issue/>.

41. There is a strong correlation between poverty and the level, quality, and quantity of education, and correspondingly between racialized poverty and racialized education. The digital divide in education is generally aligned with this existing divide. In poor neighbourhoods and communities, there is less access to digital education from nursery through post-secondary levels because of limited access to electricity or alternative energy sources, to digital devices, to digital content and, ultimately, to teachers and university professors who themselves are digitally competent. Where people of African descent are poorer than other groups, the intersection between poverty and race has resulted in digitally disadvantaged homes, schools and communities. This means that children of African descent enter higher levels of education and training disadvantaged and consequently are less prepared to work in the digital world.

42. At higher levels of education, race plays a triple role in digitalization and the use of AI in two ways. First, there is much less research about the issues and concerns of people of African descent, including and particularly by scholars and researchers of African descent. Consequently, the frameworks used for such research may, intentionally or unintentionally, introduce and perpetuate racial bias and prejudice, rendering the data they produce injurious to people of African descent. Second, because AI is predicated on the use of large data sets; the paucity of accurate data about people of African descent presents another layer of bias. Third, biases and stereotypes are deeply embedded in machine learning,²³ as for example in photography where “photographic systems attempted to create a universal or neural standard for all subjects, yet the norm ended up being white skin”.²⁴

43. In its 2021 flagship report ‘World Employment and Social Outlook: the role of digital labour platforms in transforming the world of work’, the ILO documents the pervasive nature of digitalization and AI in virtually all aspects of work from education to agriculture, transport to industry, and the ubiquitous nature of all types of learning platforms.²⁵ Concerns about the exposure and loss of jobs because of digitalization and AI are justified, as experts and researchers have exposed in some areas. Routine jobs, depending on the overall development, wealth and technological and industrial advancements of the society, are particularly vulnerable to automation.²⁶ The researchers also indicate that machine learning systems are also able to improve performance in non-routine tasks. They indicate that in low-income countries, only 0.4 per cent of total employment versus 5.5 per cent in high income countries is likely to be affected by automation. They flag that the impact of augmentation is higher: 10.4 per cent in low-income countries and 13.4 per cent in high-income countries. This impacts people of African descent.

44. The Committee of Experts on the application of Conventions and Recommendations, in their General Observation (2019) on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), noted that under the Convention, the term ‘race’ includes any discrimination against linguistic communities or minority groups whose identity is based on religious or cultural characteristics or national or ethnic origin, with ‘colour’ being one of the ethnic characteristics. The Committee acknowledged the persisting patterns of discrimination on the grounds of race, colour and national extraction.²⁷

45. Researchers note that the impact of digitalization and AI on employment is not an apocalypse but a shift, arguing that the potential augmentation effects are higher than

²³ Ludovica Marinucci1, Claudia Mazzuca and Aldo Gangemi, “Exposing implicit biases and stereotypes in human and artificial intelligence: State of the art and challenges with a gender focus”, *AI and Society*, 38 (2): 747-761 (2023); Ryan Baker and Aaron Hawn, “Algorithmic Bias in Education”, *Algorithmic Bias in Education, International Journal of Artificial Intelligence in Education*, 32(4), (2021).

²⁴ Nettrice R. Gaskins, “Interrogating AI Bias through Digital Art. Social Science Research Council”, *Just Tech*, 7 September 2022, available at <https://doi.org/10.35650/JT.3039.d.2022>.

²⁵ ILO, 2021.

²⁶ Submission by ILO, Paweł Gmyrek, Janine Berg and David Bescond, “Generative AI and jobs: A global analysis of potential effects on job quantity and quality”. ILO Working Paper 96. (Geneva: ILO, 2023).

²⁷ ILO, Committee of Experts on the Application of Conventions and Recommendations, 2019.

automation exposure in most countries, and therefore likely to transform structures and roles, though some jobs may be lost.²⁸

46. Racialization of and racial discrimination in employment, carrying over the positive or negative results of racialized education and training, begin in recruitment, and permeate decisions about orientation, professional development and training, job assignments, recognition and reward, and ultimately promotion and separation, whether voluntary or involuntary.²⁹ Compounding the situation is that the racism in housing, health care, justice, and other spheres, equally fed by racialized generative AI, feed into education and employment.³⁰ Thus, as digitalization becomes increasingly widespread in the world of work, any biases of employers including based on race, but also on gender and other demographic factors, influence decisions. AI, increasingly widely used to analyze and interpret data, because of undetected bias introduces into employment stereotypes and prejudice that work against people of African descent.

47. Few people of African descent inherit wealth, and intergenerational and transgenerational poverty and the consequential disadvantage is well documented.³¹ The carry-over from education through employment plays out in economic empowerment among people of African descent. Bias in the coding and in algorithms used in housing, banking, financing, insurance, and even in some public registration numbers, is well documented. In its 2023 report on *Economic Empowerment of people of African descent*, the Working Group dealt extensively with the bias, prejudice and discrimination against people of African descent in the economic, financial and digital sectors.

48. Digital inequities acutely affect young people globally, facilitate the spread of disinformation and misinformation, and restrict economic opportunities and successes for people of African descent. People of African descent are not well represented in data sets, which impacts algorithmic decision-making systems causing disproportionate harm and discrimination against people of African descent.³²

49. The result of the situation in education, employment and economic empowerment is graphically played out in the data on patents as an indicator of innovation, research and development. The World Intellectual Property Organisation data suggest a bleak picture. In 2023, it shows that computer technology topped the patent registration across the globe with digital communication in the third spot. The report also showed that Asia outstrips every other region, and that apart from registered growth in South Africa, countries with large concentrations of people of African descent are not on the map.³³ While the United States remains the top producer of patents, historical data show that patents by African-Americans fall well below the percentage of African-Americans in the overall population (14.4 per cent) – 2.5 per cent of patents³⁴ and 1.1 per cent of patents in 2021.³⁵ It is important to note that

²⁸ Submission by ILO, Paweł Gmyrek, Janine Berg and David Bescond, “Generative AI and jobs: A global analysis of potential effects on job quantity and quality”.

²⁹ Zhisheng Chen, “Ethics and discrimination in artificial intelligence-enabled recruitment practices.” *Humanities and Social Sciences Communications*, 10(1), 1-12 (September 2023); Elham Albaroudi, Taha Mansouri and Ali Alameer, “A Comprehensive Review of AI Techniques for Addressing Algorithmic Bias in Job Hiring”, *AI*, 5(1), 383-404 (February 2024), available at <https://doi.org/10.3390/ai5010019>.

³⁰ Emilio Ferrara, “Fairness and bias in artificial intelligence: A brief survey of sources, impacts and mitigation strategies”, *Sci*, 6(1), 3 (December 2023), available at [doi:https://doi.org/10.3390/sci6010003](https://doi.org/10.3390/sci6010003)

³¹ Christian E. Weller and Lily Roberts, “Eliminating the Black-White Wealth Gap Is a Generational Challenge”, Center for American Progress, 19 March 2021, available at <https://www.americanprogress.org/article/eliminating-black-white-wealth-gap-generational-challenge/>.

³² See A/HRC/54/67

³³ World Intellectual Property Organization (WIPO), *IP Facts and Figures* (Geneva, WIPO, 2023), available at <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-943-2023-en-wipo-ip-facts-and-figures-2023.pdf>.

³⁴ Jonathan Rothwell, Andre M. Perry and Mike Andrews, “The Black innovators who elevated the United States: Reassessing the Golden Age of Invention”.

³⁵ ZIPPIA, “Inventor Demographics and Statistics in the US”, 5 April 2024, available at <https://www.zippia.com/inventor-jobs/demographics/>.

people of African descent, while often concentrated in resource-rich areas, remain socially and economically disadvantaged. This is the case in digitalization, in science and technology as much as necessary for the advancement of their communities and societies, as they have excelled in other areas such as the arts and sports.

E. The arts, sports and culture

50. The cultural rights of people of African descent risk marginalization in the digital age. Digital platforms and AI algorithms that prioritize certain types of content over others can marginalize cultural expressions and contributions from communities of African descent. This cultural marginalization not only undermines the diversity of digital spaces but also contributes to the erasure of Black cultural identities and narratives. The lack of representation in the development of digital technologies means that the cultural nuances and needs of people of African descent are often overlooked. This exclusion is particularly evident in content recommendation algorithms on social media and streaming platforms, which may not promote content created by or relevant to Black communities. Through policies and practices, it is imperative to design meaningful inclusivity and representation in the tech industry to ensure that digital technologies serve the diverse cultural needs of all communities.

51. Digitalization has the potential to bring diverse people together to build strong relationships through various forms of artistic expression. A growing body of research points towards the value of arts and sports-based community development initiatives and standpoint projects involving transformative youth organising with people of African descent which seek to support people in the exploration and self-expression of their identities and develop their sense of agency. People of African descent recognize the value of arts in renegotiating identities. It can provide ‘a powerful means of representing identity, and of asserting cultural difference’.³⁶ However, a knowledge gap persists, for example around how young African diaspora in Australia create and use the art form of Hip Hop to develop and broadcast their political voice as a site of resistance, particularly to racializing discourses for sustaining agency, countering stereotypes, and through self-determination. Digitalization is not always used to benefit of people of African descent, however. Unlimited access to the intellectual property of others remains a major concern.

F. Current and emerging regulatory regime

52. The Working Group takes note of the diversity of measures and initiatives being taken at the national, regional and international levels to address the moral and ethical concerns about AI.

53. In October 2022, the Food and Drug Administration³⁷ in the United States, issued guidance significantly broadening the scope of the tools it plans to regulate. This guidance emphasizes that more must be done to combat bias and promote equity amid the growing number and increasing use of AI and algorithmic tools. On 30 October 2023, the United States government issued the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,³⁸ which stressed the need for AI policies to comply with all Federal laws and be consistent with “equity and civil rights”. It expressed concern about how AI had been used to deepen discrimination and bias. It stated that AI

³⁶ Sarah Williams, submission by the African Australian Advocacy Centre.

³⁷ See Food and Drug Administration, “Clinical Decision Support Software: Guidance for Industry and Food and Drug Administration Staff”, 28 September 2022, available at <https://www.fda.gov/media/109618/download>.

³⁸ The White House, “Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence”, 30 October 2023, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>.

systems had “reproduced and intensified existing inequities, caused new types of harmful discrimination, and exacerbated online and physical harms”.

54. Brazil reported having established the Interministerial Working Group (IWG)³⁹ on 20 November 2023, a day celebrated as the National Day of Zumbi and Black Consciousness. The IWG aims to propose measures to promote rights and combat racism in digital communication services, and to strengthen and sustain black media. In the framework of the IWG, the Ministry of Racial Equality and the Social Communication Secretariat provide an online Library on Digital Technologies and Racial Justice.⁴⁰

55. In Colombia, the Ministry of Cultures, Arts and Knowledge has initiated consideration of protocols for the ethical and democratic use of AI within the ministry with the aim of guaranteeing the socio-cultural rights of Afro-descendants and other ethnic groups. Regarding education, Colombia informed of an alliance between the Ministry and the Universidad del Rosario to think, disseminate and educate on the problem of culture and AI.

56. Ecuador underlined the impact of AI, digitalization and new and emerging technologies on the fundamental and collective rights of Afro-descendants, and the potential risk posed by these tools to the socio-economic rights of Afro-descendants. In June 2024, the National Assembly registered the presentation of a bill called “Draft Organic Law for the Regulation and Promotion of Artificial Intelligence in Ecuador”. Ecuador has urged the legislature, public and control institutions to develop rules and regulations for the development, provision, commercialization, use and utilization of AI, digitalization and new and emerging technologies based on human rights, including the rights of “populations of peoples, nationalities and Afro-descendants”.

57. Spain reported that Law 15/2022 addressed equal treatment and non-discrimination in the field of AI and automated decision-making. Furthermore, Spain’s Strategic Framework for Citizenship and Inclusion against Racism and Xenophobia guarantees equal opportunities in access to information and communications technology.

58. On 22 September 2021, the United Kingdom of Great Britain and Northern Ireland published a ten-year National AI Strategy.⁴¹ The Government has since engaged in a public consultation with regulators on the Government’s AI regulation White Paper of March 2023, which proposed a framework of five voluntary principles to guide responsible AI design, development, and use. From 1-2 November 2023, the Government hosted the AI Safety Summit, culminating in the Bletchley Declaration,⁴² an agreement among 28 countries and the E.U. on cooperation and responsibility-sharing on mitigating the risks of AI.

59. The African Union aims to harness the revolutionary potential of AI in the fulfilment of Africa’s long-term development aspirations set out in its Agenda 2063, while recognizing its risks as well as the need for AI development on the Continent to be Africa-owned, people-centred, inclusive and meet the specific needs of Africans, including in education, health, agriculture, infrastructure, peace and security as well as good governance. To that end, on 13 June 2024, the African Union adopted the “Continental Artificial Intelligence Strategy” and the “African Digital Compact”,⁴³ at the 2nd Extraordinary session of the Specialized Technical Committee on Communication and ICT.

³⁹ See <https://www.gov.br/igualdaderacial/pt-br/assuntos/gti-comunicacao-antirracista>.

⁴⁰ See <https://www.gov.br/igualdaderacial/pt-br/assuntos/gti-comunicacao-antirracista/biblioteca>.

⁴¹ See

https://assets.publishing.service.gov.uk/media/614db4d1e90e077a2cbdf3c4/National_AI_Strategy_-_PDF_version.pdf.

⁴² See <https://www.gov.uk/government/publications/ai-safety-summit-2023-the-bletchley-declaration/the-bletchley-declaration-by-countries-attending-the-ai-safety-summit-1-2-november-2023>.

⁴³ See African Ministers Adopt Landmark Continental Artificial Intelligence Strategy, African Digital Compact to drive Africa’s Development and Inclusive Growth, available at https://au.int/sites/default/files/pressreleases/43871-pr-Ministerial_PR_-_STC-CICT1.pdf, 13 June 2024.

60. The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law⁴⁴ is an international legally binding instrument. It was adopted on 17 May 2024 by the Committee of Ministers of the Council of Europe at its 133rd session. The Convention aims to ensure the compliance of AI systems, throughout their lifecycles, with human rights, democracy and the rule of law based on the following principles: human dignity and individual autonomy; equality and non-discrimination; respect for privacy and personal data protection; transparency and oversight; accountability and responsibility; reliability; and safe innovation.

61. The European Artificial Intelligence Act⁴⁵ is the E.U.'s regulatory framework for AI. It entered into force on 1 August 2024. The Act harmonized rules on responsible development and use of AI within the E.U., which include transparency obligations for general-purpose AI and mandatory labelling of artificial or manipulated images, audio or video content; and prohibition of the use of biometric identification systems by law enforcement. The Act aims to ensure safety and compliance with fundamental rights and democracy while promoting innovation.

V. Conclusions and recommendations

A. Conclusions

62. Digitalization and AI, including generative AI, are fundamentally neutral. Bias, and consequently prejudice, discrimination and the violation of accepted ethical and human rights norms and standards seep into digitalization and AI through human use, misuse and abuse.⁴⁶ As digitalization and AI have a cumulative, compounding and multiplier effect, they amplify, deepen, widen, and enmesh their impact, positive or negative, in evermore complex ways. Research shows that people can unconsciously retain biases garnered from AI, retaining, and deploying these biases in decision-making that result in biased judgments and discriminatory outcomes,⁴⁷ if left unchecked. Conversely, if the bias is towards fairness and equity, then the benefit is increasingly more empowering, unless arrested by harmful forces. These principles are true in education, employment and economic empowerment as they are true in other spheres or aspects of human life. Thus, the fundamental solution is to ensure that from the inception, at the lowest rung of any digitalization and/or AI, that there is a conscious effort to act for benefit and not harm, recognizing that once human agency is involved, there is going to be bias.

63. In health, housing, employment and education, data used as evidence to train AI models have been prejudiced against people of African descent. First, by disproportionately reflecting specific demographics, and second, by having certain assumptions or stereotypes about different groups embedded in the data. This means AI models often reproduce and perpetuate the same inequities found in the socio-political and cultural contexts in which they are developed. Bad or incorrect data is not the only problem with the use of big data in socio-economic decisions. The use of big data and algorithms in the context of healthcare, education, housing, employment, access to services, and in attaining cultural rights has the potential to “reproduce existing patterns of discrimination, inherit the prejudice of prior decision makers, or simply reflect the widespread biases that persist in society.

⁴⁴ See Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, available at <https://rm.coe.int/1680afae3c>.

⁴⁵ See Regulation (EU) 2024/1689 of the European Parliament and of the Council of the European Union of 13 June 2024, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401689.

⁴⁶ Ruha Benjamin, “Race After Technology: Abolitionist Tools for the New Jim Code”, *Social Forces*, 98(4):1-3 (2020).

⁴⁷ Ivana Bartoletti and Raphaële Xenidis, *Study on the impact of artificial intelligence systems, their potential for promoting equality, including gender equality, and the risks they may cause in relation to non-discrimination* (Council of Europe, 2023), available at <https://rm.coe.int/study-on-the-impact-of-artificial-intelligence-systems-their-potential/1680ac99e3>.

64. Through a racial discrimination lens, it is clear that digital space is often misunderstood as disconnected from challenges that take place offline. However, a digital transformation agenda without looking at human rights will not bring meaningful change for people of African descent. Seemingly neutral technology has human rights implications. In developing regulations of new technologies, it is crucial for States to fulfil their human rights obligations. While ethics in digital transformation is important, it does not create obligations for States. It is therefore essential to maintain a focus on obligations of States under international human right treaties in order to fulfil the ESCRs of people of African descent.

65. As the use of digitalization and AI become more widespread in society, governments, educators, employers and citizens at large will need to pay more attention to the nature and quality of education, training and life-long learning.

66. Digitalization and AI will not affect all societies, all sectors of society, nor all strata of society equally. The known variables of levels of education, affluence of poverty, demographic factors like race and gender, and the nature of jobs are all in play.

67. The underlying issues of stable, clean energy; individual and societal levels of digital literacy, skills and competencies; the readiness of national, international leadership across all sectors; and the adequacy of legislation and policies to harness digitalization and AI for the public good must be addressed nationally and internationally.

68. International and national regulatory frameworks, namely conventions, legislation, policies, administrative procedures, are still inadequate to address the current state of digitalization and AI. Moreover, without considerable focused investment in closing these gaps, the necessary regulation of digitalization and AI, and monitoring of their impact, will continue to fall behind, to the detriment of traditionally disadvantaged groups.

69. The public discourse, debate and discussion of digitalization and AI has not kept pace with the stealth of the reach, scope and impact of digitalization and AI. Similarly, education at all levels, from pre-K to post-secondary, is inadequate for ethically and equitably addressing the role that digitalization and AI are already playing and will continue to play in all aspects of daily life. Thus, even among government personnel, the expert knowledge of digitalization and AI falls well below what is needed for governments to discharge their role in governance. The limited levels of digital literacy, skills and competencies across many societies places many aspects of daily life vulnerable to the unplanned and unmanageable penetration of digitalization and AI.

70. While the scope, reach and impact of digitalization and AI continue to increase, there is growing consensus that human beings must remain at the helm and in control of these technologies at the highest meta levels, in the interests of the good of humankind, and in every sector, at every level, in every organization and in every job in the best interests of individual and community well-being, and to prevent the breach of the fundamental human rights and freedoms of every human being.

71. Particular attention must be paid to emerging and evolving issues and concerns, such as, for example, whether robots should have legal identities and protections; and the legal and ethical challenges digitalization and AI will engender. Equally, attention must be paid to how the potential benefits of digitalization and AI can and will be used, ethically and equitably, to address some of the historical perennial challenges that have haunted the human race, to reduce the divide between those who have and those who do not, as well as to prevent, contain and mitigate emerging and evolving challenges of environmental justice and digital justice.

72. Ultimately, these challenges require greater and more focused attention and investment in those who risk falling behind, in governance, education and justice, as human priorities. To mitigate these concerns, technology needs to be produced that can work within complex social realities, which require understanding legal, ethical and social contexts. This can only be done by incorporating more diverse perspectives into the technology sector.

73. Research on AI has shown that there is nevertheless extensive agreement on the core content of ethical principles that should be applied to AI systems. Firstly, transparency that can be interpreted widely to include accessibility, explainability and explicability of an AI system - in other words the possibilities for an individual to understand how the system works

and how it produces its results. Secondly, justice and fairness - this principle includes non-discrimination, impartiality, consistency and respect for diversity and plurality. It further implies the possibility for the subject of an AI system's operation to challenge the results, with the possibility of remedy and redress. Thirdly, responsibility - this principle encompasses the requirement that a human being should be responsible for any decision affecting individual rights and freedoms, with defined accountability and legal liability for those decisions. This principle is thus closely related to that of justice and fairness. Fourthly, safety and security - this implies that AI systems should be robust, secure against outside interference and safe against performing unintended actions, in accordance with the principle of precaution. The fifth element is, privacy - whilst respect for human rights generally might be considered inherent in the principles of justice and fairness and of safety and security, the right to privacy is particularly important wherever an AI system is processing personal or private data.⁴⁸

B. Recommendations

74. States must raise general awareness about digitalization and AI, ensuring a basic level of digital literacy in at least 87 per cent of the population, in line with the global adult literacy rate.
75. States must invest in public education about digitalization, AI, e-governance, e-learning, e-health, e-finance and diverse e-applications, making the internet accessible and available to all.
76. States must provide affordable and equal access to the internet, to technological devices, to stable, clean energy sources and to life-long learning for all.
77. States must invest more equitably in education, particularly computer education and digital literacy and skills at all levels from pre-school to post-secondary education, integrating an understanding of digitalization and the use of AI in all disciplines and all spheres of life, as research shows that the return on investment in education is relatively high, as a public and a private good.
78. States must invest heavily in training teachers, at all levels from pre-school to university, in the academic, professional, and vocational fields, and transforming their capacity to use, apply and teach their students to organically use and apply technology in their learning and routine activities.
79. States must institutionalize legislative and policy frameworks, informed by ethical principles and commitment to fairness, equality and equity to regulate the use of digitalization and AI, generative AI and the next generation of technologies, putting in place effective sanctions for non-compliance and mitigating and compensatory initiatives for any harm caused by non-compliant entities.
80. States must support a recognition of the impact of race, racial bias and racial discrimination in digitalization and the use, misuse and abuse of AI through research regarding people of African descent.
81. States must ensure that digitalization and the use of AI continue to be regulated, moderated, facilitated and remain subject to human oversight.
82. States must facilitate and incentivize the integration of people of African descent in economic development sectors, including in employment, banking, finance and insurance, that are digitally progressive, ensuring that the existing divide is reversed and not widened, deepened and prolonged, and resulting in enhanced innovation, research and development for and by people of African descent.

⁴⁸ AI Ethics Guidelines: European and Global Perspectives, Draft Report commissioned by the Council of Europe Ad Hoc Committee on Artificial Intelligence (CAHAI), Ienca M. and Vayena E., March 2020.

83. States should support research on the urgent and ongoing need to establish legal standards that ensure AI is used ethically and in a manner that protects, promotes and fulfils human rights, for example in the justice and related sectors.

84. States are urged to include people of African descent in decision-making processes, advocating for cultural responsiveness through inter-cultural frameworks of racial and cultural dignity to ensure a more inclusive experience for all, as well as the imperative of tackling racial discrimination head-on.

85. States are urged to ensure that all actors, State and non-State, focussing on the arts, sports and cultural expressions integrate human rights principles in digital transformation activities.

86. States should establish regulatory guidelines that require that face recognition and other AI and language learning models include testing for racial bias and the publishing of results to increase transparency and accountability in law enforcement, economic and all sectors using such technologies.

87. States should embed ethical considerations in regulatory policies and practices that factor in health, housing and food security data and measures.

88. States should ensure adequate funding and support for oversight bodies to monitor, evaluate and sanction the implementation of legislation, regulations and standards that govern the use of digitalization, artificial and new and emerging technologies.
